IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2072 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

SALIMBHAI IBRAHIM

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR SAMEER DAVE AGP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 3/1/2002 passed by the District Magistrate, Ahmedabad.

2. The learned counsel for the petitioner has argued

that the detaining authority has alleged that though the petitioner is not resident of Village Saroda, Taluka Dholka District Ahmedabad and not connected with agricultural activities, he has obtained the land of Block NO.339 of Village Saroda illegally by producing wrong certificates of income, Other Backward Class etc. in collusion with Talati-cum-Mantri, Saroda. He has further argued that the said laid is allotted to the petitioner and the petitioner is wrongly involved in the alleged offence. The learned counsel for the petitioner has argued that for the said dispute of land, the respective parties have filed separate proceedings before the competent authority and it has nothing to do with the present proceedings. The learned counsel for the petitioner has submitted that there is only alleged single offence registered against the petitioner, except the said offence, no other offence is registered against the petitioner. The learned counsel for the petitioner has further argued that the statement of Talati-cum-Mantri, Saroda has been recorded but the same has not been placed by the sponsoring authority before the detaining authority which prejudiced the rights of the petitioner. He has further argued that the petitioner made a detailed representation to the detaining authority on 21/1/2001 and thereby demanded various documents including the statement of Talati-cum-Mantri, Saroda. Though the detaining authority has received the said representation, but the said statement of Talati-cum-Mantri, Saroda has not been supplied to the petitioner. The learned AGP fairly admits the same. In support of his arguments, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in the case of V.C. Mohan vs. Union of India and others, reported in (2002) 3 SCC 451. Head-note "A" of the said judgement is as under:-

"A. Preventive Detention - Detention order Non-application of mind - non-placement of relevant material before detaining authority by sponsoring authority - Held on facts, rendered the detention order illegal - Enormity or gravity of the alleged offence committed by the detenu, held irrelevant - COFEPOSA Act, 1974, S.3(1)(i)."

3. For the land in question, the respective parties have filed proceedings before the competent court and the same are not required to be adjudicated at this stage under the present proceedings. The present petition can be disposed of merely on short ground of non-supply of statement of Talati-cum-Mantri, Saroda. Neither the

detaining authority nor the State Government has supplied statement of the Talati-cum-Mantri, Saroda to the petitioner though the same has been demanded by the petitioner. It is the duty of the detaining authority to provide each and every document on which the detaining authority has relied upon for passing the detention order. But the detaining authority has failed to provide statement of Talati-cum-Mantri, Saroda to the petitioner and thereby the petitioner has been prevented from making an effective representation. Neither the detaining authority nor the State Government has filed affidavit for non-supply of the statement of Talati-cum-Mantri, Saroda to the petitioner. Further, the sponsoring authority has not placed statement of Talati-cum-Mantri, Saroda before the detaining authority which prejudiced the rights of the petitioner and hence, in view of the aforesaid judgement, the petition is required to be allowed.

4. The petition is allowed. The impugned order of detention dated 3/1/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Salimbhai Ibhrahimbhai is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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